

Conference Engrossed

State of Arizona  
Senate  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 334

## SENATE BILL 1339

AN ACT

AMENDING SECTIONS 41-783 AND 41-1001, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1021.02; AMENDING SECTIONS 41-1024, 41-1029, 41-1030, 41-1031, 41-1032, 41-1036, 41-1044, 41-1052, 41-1055, 41-1073 AND 41-1091, ARIZONA REVISED STATUTES; AMENDING LAWS 2000, CHAPTER 389, SECTION 5; RELATING TO STATE AGENCIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-783, Arizona Revised Statutes, is amended to  
3 read:

4 41-783. Personnel rules

5 The personnel rules shall provide for:

6 1. A position classification plan for all positions in the state  
7 service.

8 2. Competitive examinations to test the relative qualifications of  
9 applicants for positions in state service. All competitive examinations  
10 shall be given statewide. For purposes of this paragraph, "statewide" means  
11 that a competitive examination shall be given in an office of the department  
12 of economic security in each city or town of the state in which such office  
13 is located, unless the director designates another location within such city  
14 or town.

15 3. Evaluation of performance of employees for the purpose of improving  
16 staff effectiveness.

17 4. Promotions or transfers between classes that give appropriate  
18 consideration to the applicant's qualifications, record of performance and  
19 conduct.

20 5. Establishment of eligibility lists for appointment and promotion,  
21 upon which lists shall be placed the names of successful candidates in the  
22 order of their relative excellence in their respective examinations.

23 6. Rejection of candidates for appointment or promotion who fail to  
24 fulfill reasonable requirements.

25 7. Delivery of a list of qualified applicants to any state agency  
26 requiring it. The state agency may select and hire an employee from this  
27 list.

28 8. A minimum period of original probationary service following initial  
29 appointment. During a period of original probationary service, the  
30 probationary employee shall perform the actual duties of the position and may  
31 be discharged without cause. A period of promotional probation service shall  
32 be established by the director.

33 9. A reasonable period of provisional employment without competitive  
34 examination if there is no eligibility list available for the position.

35 10. Emergency appointments for not more than thirty days with or  
36 without examination as provided by the rules.

37 11. Temporary appointments to positions that occur, terminate and recur  
38 periodically regardless of the duration of the position.

39 12. Transfer from a position in one department to a similar position  
40 in another department involving similar qualifications, duties,  
41 responsibilities and salary ranges.

42 13. Reinstatement to an eligibility list of previous employees who have  
43 resigned in good standing or who were separated from their positions without  
44 fault on their part.

1        14. Reduction in force by reason of lack of funds or work, abolition  
2 of a position or material change in duties or organization, and for  
3 reemployment of employees separated by reduction in force as provided in  
4 section 41-763.04.

5        15. The circumstances under which an employee may be suspended without  
6 pay.

7        16. Establishment of a plan for resolving employee grievances and  
8 complaints and in cases of alleged discrimination for referral to the  
9 appropriate agency if an employee is not otherwise satisfied with the final  
10 grievance resolution.

11       17. Attendance, including hours of employment, annual leave, sick leave  
12 and special leaves of absence, with or without pay or with reduced  
13 pay. Rules on hours of employment shall provide for the implementation of  
14 flexible hours of employment as an option for employees if the director of  
15 an employing agency decides, in the director's discretion, that existing  
16 services can be maintained. Rules shall provide:

17       (a) For the transfer of accumulated annual leave from one employee to  
18 another employee in the same agency and for transfer of accumulated annual  
19 leave from one employee to another employee in another agency if the  
20 employees are members of the same family. Such transfers may occur if the  
21 employee to whom the leave is transferred has a seriously incapacitating and  
22 extended illness or injury or a member of the employee's immediate family has  
23 a seriously incapacitating and extended illness or injury and the employee  
24 has exhausted all available leave balances. Transferred annual leave shall  
25 be increased or reduced proportionally by the difference in the salaries of  
26 the employees as determined by department rule. For the purpose of this  
27 subdivision, "family" means spouse, natural child, adopted child, foster  
28 child, stepchild, natural parent, stepparent, adoptive parent, grandparent,  
29 grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law,  
30 daughter-in-law, mother-in-law, or father-in-law, AUNT, UNCLE, NEPHEW OR  
31 NIECE.

32       (b) THAT an employee who receives transferred annual leave as provided  
33 in subdivision (a) of this paragraph is limited to using six consecutive  
34 months of transferred leave per occurrence unless the employee has applied  
35 for long-term disability insurance as provided by rule.

36       (c) That if a permanent status employee is unable to work due to a  
37 non-job related, seriously incapacitating and extended illness or injury, as  
38 certified by a physician of the employee subject to confirmation by a  
39 physician chosen by the agency, and the employee has exhausted all leave  
40 balances and any leave transferred pursuant to subdivision (a) of this  
41 paragraph, the employee shall be placed on leave without pay status for up  
42 to one hundred eighty days or until able to return to work, whichever is  
43 sooner.

44       18. Development of policies and procedures for the employment of  
45 qualified disabled job applicants.

1 19. Establishment of a clerical pool in any locality where the demand  
2 for temporary clerical help warrants.

3 20. Leaves of absence to allow employees in state service to accept  
4 appointment to nonelective positions in state employment that are exempt from  
5 the terms of this article and article 5 of this chapter.

6 21. The adoption of special rules applicable solely to special classes  
7 of employees whose duties, as determined by the director, justify the  
8 adoption of rules applicable only to a specific class of employees.

9 22. The establishment of standards of ethical conduct for employees.

10 23. ~~Provision that~~ Reasonable public notice shall TO be given of the  
11 examinations for a position and the examination dates.

12 24. Authorization to publish and make available to all employees a  
13 handbook outlining pertinent rules.

14 25. A determination as to which positions in state employment shall  
15 qualify the employee to receive overtime pay. In making this determination  
16 the director shall consider all employees who are covered under the fair  
17 labor standards act of 1938 (52 Stat. 1060; 29 United States Code sections  
18 201 through 219), as amended and interpreted, and shall exclude all employees  
19 who meet exemption requirements as defined in such act, as amended and  
20 interpreted. No overtime or compensatory time may be granted to the following  
21 positions and persons:

22 (a) All elected positions.

23 (b) All positions which are appointed pursuant to section 38-211.

24 (c) All professional positions as defined by the director.

25 (d) Persons whose primary duty is to manage the state agency or state  
26 agency subdivisions, and:

27 (i) Who use discretionary powers.

28 (ii) Who direct the work of at least two other employees.

29 (iii) Who have the authority to hire and fire.

30 26. Compensatory time off for employees, except those employees in  
31 positions prescribed in paragraph 25 of this section.

32 27. Approving overtime pay for positions eligible for compensatory time  
33 off pursuant to paragraph 26 of this section because their primary duty is  
34 management when either of the following criteria is met:

35 (a) The practice is determined by the director to be a prevailing  
36 condition in the Arizona labor market and when pay differentials between  
37 subordinates and supervisors are reduced by overtime pay received by the  
38 nonexempt subordinates to the extent that it is no longer an incentive to  
39 remain in the supervisory position.

40 (b) When temporary emergency conditions arise that make it more  
41 practical to pay overtime than to grant compensatory leave.

42 28. Establishment of a plan for the impartial review of complaints.

43 Sec. 2. Section 41-1001, Arizona Revised Statutes, is amended to read:

44 41-1001. Definitions

45 In this chapter, unless the context otherwise requires:

1       1. "Agency" means any board, commission, department, officer or other  
2 administrative unit of this state, including the agency head and one or more  
3 members of the agency head or agency employees or other persons directly or  
4 indirectly purporting to act on behalf or under the authority of the agency  
5 head, whether created under the Constitution of Arizona or by enactment of  
6 the legislature. Agency does not include the legislature, the courts or the  
7 governor. Agency does not include a political subdivision of this state or  
8 any of the administrative units of a political subdivision, but it does  
9 include any board, commission, department, officer or other administrative  
10 unit created or appointed by joint or concerted action of an agency and one  
11 or more political subdivisions of this state or any of their units. To the  
12 extent it purports to exercise authority subject to this chapter, an  
13 administrative unit otherwise qualifying as an agency must be treated as a  
14 separate agency even if the unit is located within or subordinate to another  
15 agency.

16       2. "Code" means the Arizona administrative code.

17       3. "Committee" means the administrative rules oversight committee.

18       4. "Contested case" means any proceeding, including rate making, price  
19 fixing and licensing, in which the legal rights, duties or privileges of a  
20 party are required or permitted by law to be determined by an agency after  
21 an opportunity for an administrative hearing.

22       5. "Council" means the governor's regulatory review council.

23       6. "Delegation agreement" means an agreement between an agency and a  
24 political subdivision that authorizes the political subdivision to exercise  
25 functions, powers or duties conferred on the delegating agency by a provision  
26 of law. Delegation agreement does not include intergovernmental agreements  
27 entered into pursuant to title 11, chapter 7, article 3.

28       7. "Emergency rule" means a rule that is made pursuant to section  
29 41-1026.

30       8. "Fee" means a charge prescribed by an agency for an inspection or  
31 for obtaining a license.

32       9. "Final rule" means any rule filed with the secretary of state and  
33 made pursuant to an exemption from this chapter in section 41-1005, made  
34 pursuant to section 41-1026, approved by the council pursuant to section  
35 41-1052 or 41-1053 or approved by the attorney general pursuant to section  
36 41-1044. For purposes of judicial review, final rule includes proposed  
37 summary rules having interim effect pursuant to section 41-1027.

38       10. "License" includes the whole or part of any agency permit,  
39 certificate, approval, registration, charter or similar form of permission  
40 required by law, but it does not include a license required solely for  
41 revenue purposes.

42       11. "Licensing" includes the agency process respecting the grant,  
43 denial, renewal, revocation, suspension, annulment, withdrawal or amendment  
44 of a license.

1       12. "Party" means each person or agency named or admitted as a party  
2 or properly seeking and entitled as of right to be admitted as a party.

3       13. "Person" means an individual, partnership, corporation,  
4 association, governmental subdivision or unit of a governmental subdivision,  
5 a public or private organization of any character or another agency.

6       14. "Preamble" means:

7       (a) For any rule making subject to this chapter, a statement  
8 accompanying the rule that includes:

9       (i) Reference to the specific statutory authority for the rule.

10       (ii) The name and address of agency personnel with whom persons may  
11 communicate regarding the rule.

12       (iii) An explanation of the rule, including the agency's reasons for  
13 initiating the rule MAKING.

14       (iv) A reference to any study RELEVANT TO THE RULE that the agency  
15 REVIEWED AND EITHER proposes to rely on in its evaluation of or justification  
16 for the proposed rule OR PROPOSES NOT TO RELY ON IN ITS EVALUATION OF OR  
17 JUSTIFICATION FOR THE RULE, and where the public may obtain or review the  
18 EACH study, all data underlying each study, AND any analysis of the EACH  
19 study and other supporting material.

20       (v) The economic, small business and consumer impact summary, or in  
21 the case of a proposed rule, a preliminary summary and a solicitation of  
22 input on the accuracy of the summary.

23       (vi) A showing of good cause why the rule is necessary to promote a  
24 statewide interest if the rule will diminish a previous grant of authority  
25 of a political subdivision of this state.

26       (vii) Such other matters as are prescribed by statute and that are  
27 applicable to the specific agency or to any specific rule or class of rules.

28       (b) In addition to the information set forth in subdivision (a) of  
29 this paragraph, for a proposed rule, the preamble also shall include a list  
30 of all previous notices appearing in the register addressing the proposed  
31 rule, a statement of the time, place and nature of the proceedings for the  
32 making, amendment or repeal of the rule and where, when and how persons may  
33 request an oral proceeding on the proposed rule if the notice does not  
34 provide for one.

35       (c) In addition to the information set forth in subdivision (a) of  
36 this paragraph, for a proposed summary rule, the preamble also shall include  
37 a statement of the time, place and nature of the proceedings for the making,  
38 amendment or repeal of the rule and an explanation of why summary proceedings  
39 are justified.

40       (d) For a final rule, except an emergency rule, the preamble also  
41 shall include, in addition to the information set forth in subdivision (a),  
42 the following information:

43       (i) A list of all previous notices appearing in the register  
44 addressing the final rule.

1 (ii) A description of the changes between the proposed rules,  
2 including supplemental notices and final rules.

3 (iii) A summary of the principal comments MADE REGARDING THE RULE and  
4 the agency response to them.

5 (iv) A summary of the council's action on the rule.

6 (v) A statement of the rule's effective date.

7 (e) In addition to the information set forth in subdivision (a) of  
8 this paragraph, for an emergency rule, the preamble also shall include an  
9 explanation of the situation justifying the rule being made as an emergency  
10 rule, the date of the attorney general's approval of the rule and a statement  
11 of the emergency rule's effective date.

12 15. "Provision of law" means the whole or a part of the federal or  
13 state constitution, or of any federal or state statute, rule of court,  
14 executive order or rule of an administrative agency.

15 16. "Register" means the Arizona administrative register.

16 17. "Rule" means an agency statement of general applicability that  
17 implements, interprets or prescribes law or policy, or describes the  
18 procedure or practice requirements of an agency. Rule includes prescribing  
19 fees or the amendment or repeal of a prior rule but does not include  
20 intraagency memoranda that are not delegation agreements.

21 18. "Rule making" means the process for formulation and finalization  
22 of a rule.

23 19. "Small business" means a concern, including its affiliates, which  
24 is independently owned and operated, which is not dominant in its field and  
25 which employs fewer than one hundred full-time employees or which had gross  
26 annual receipts of less than four million dollars in its last fiscal year.  
27 For purposes of a specific rule, an agency may define small business to  
28 include more persons if it finds that such a definition is necessary to adapt  
29 the rule to the needs and problems of small businesses and organizations.

30 20. "Substantive policy statement" means a written expression which  
31 informs the general public of an agency's current approach to, or opinion of,  
32 the requirements of the federal or state constitution, federal or state  
33 statute, administrative rule or regulation, or final judgment of a court of  
34 competent jurisdiction, including, where appropriate, the agency's current  
35 practice, procedure or method of action based upon that approach or opinion.  
36 A substantive policy statement is advisory only. A substantive policy  
37 statement does not include internal procedural documents which only affect  
38 the internal procedures of the agency and does not impose additional  
39 requirements or penalties on regulated parties, confidential information or  
40 rules made in accordance with this chapter.

41 21. "Summary rule" means a rule that is made pursuant to section  
42 41-1027.

1       Sec. 3. Title 41, chapter 6, article 3, Arizona Revised Statutes, is  
2 amended by adding section 41-1021.02, to read:

3       41-1021.02. State agencies; annual regulatory agenda

4       A. ON OR BEFORE DECEMBER 1 OF EACH YEAR, EACH AGENCY, EXCEPT FOR A  
5 SELF-SUPPORTING REGULATORY BOARD AS DEFINED IN SECTION 41-1092, SHALL PREPARE  
6 AND MAKE AVAILABLE TO THE PUBLIC THE REGULATORY AGENDA THAT THE AGENCY  
7 EXPECTS TO FOLLOW DURING THE NEXT CALENDAR YEAR.

8       B. THE REGULATORY AGENDA SHALL INCLUDE ALL OF THE FOLLOWING:

9       1. A NOTICE OF DOCKET OPENINGS.

10       2. A NOTICE OF ANY PROPOSED RULE MAKING, INCLUDING POTENTIAL SOURCES  
11 OF FEDERAL FUNDING FOR EACH PROPOSED RULE MAKING.

12       3. A REVIEW OF EXISTING RULES.

13       4. A NOTICE OF A FINAL RULE MAKING.

14       C. THE REGULATORY AGENDA SHALL ALSO PROVIDE FOR THE FOLLOWING  
15 INFORMATION:

16       1. ANY RULE MAKING TERMINATED DURING THE CURRENT CALENDAR YEAR.

17       2. ANY PRIVATIZATION OPTION AND NONTRADITIONAL REGULATORY APPROACH  
18 BEING CONSIDERED BY THE AGENCY.

19       D. THIS SECTION DOES NOT PROHIBIT AN AGENCY FROM UNDERTAKING ANY RULE  
20 MAKING ACTION EVEN IF THAT ACTION HAS NOT BEEN INCLUDED IN THE AGENCY'S  
21 ANNUAL REGULATORY AGENDA.

22       Sec. 4. Section 41-1024, Arizona Revised Statutes, is amended to read:

23       41-1024. Time and manner of rule making

24       A. An agency may not submit a rule to the council until the rule  
25 making record is closed.

26       B. Within one hundred twenty days after the close of the record on the  
27 proposed rule making, an agency shall take one of the following actions:

28       1. Submit the rule to the council, or, if the rule is exempt pursuant  
29 to section 41-1057, to the attorney general.

30       2. Terminate the proceeding by publication of a notice to that effect  
31 in the register.

32       C. Before submitting a rule to the council or the attorney general,  
33 an agency shall consider the written submissions, the oral submissions or any  
34 memorandum summarizing oral submissions and the economic, small business and  
35 consumer impact statement REGARDING THE RULE OR INFORMATION IN THE PREAMBLE.

36       D. Within the scope of its delegated authority, an agency may use its  
37 own experience, technical competence, specialized knowledge and judgment in  
38 the making of a rule.

39       E. Unless exempted by section 41-1005 or 41-1057 or unless the rule  
40 is an emergency rule made pursuant to section 41-1026, if the agency chooses  
41 to make the rule, the agency shall submit a rule package to the council and  
42 to the committee. The rule package shall include:

43       1. The preamble.

44       2. The exact words of the rule, including existing language and any  
45 deletions.



1       ~~3. The concise explanatory statement.~~

2       ~~4.~~ 3. The economic, small business and consumer impact statement.

3       F. If the rule is exempt pursuant to section 41-1005, the agency shall  
4 file it as a final rule with the secretary of state.

5       G. If the rule is exempt from council approval, pursuant to section  
6 41-1057, the agency shall submit the rule package set forth in subsection E  
7 of this section to the attorney general for approval pursuant to section  
8 41-1044.

9       H. An agency shall not file a final rule with the secretary of state  
10 without prior approval from the council, unless the final rule is exempted  
11 pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule made  
12 pursuant to section 41-1026 or a summary proposed rule made pursuant to  
13 section 41-1027.

14       Sec. 5. Section 41-1029, Arizona Revised Statutes, is amended to read:

15       41-1029. Agency rule making record

16       A. An agency shall maintain an official rule making record for each  
17 rule it proposes by publication in the register of a notice of proposed rule  
18 making and each final rule filed in the office of the secretary of  
19 state. The record and matter incorporated by reference must be available for  
20 public inspection.

21       B. The agency rule making record shall contain all of the following:

22       1. A copy of the notice initially filed in the office of the secretary  
23 of state.

24       2. Copies of all publications in the register with respect to the rule  
25 or the proceeding on which the rule is based.

26       3. Copies of any portions of the agency's rule making docket  
27 containing entries relating to the rule or the proceeding on which the rule  
28 is based.

29       4. All written petitions, requests, submissions and comments received  
30 by the agency and all other written materials considered or prepared by the  
31 agency in connection with the rule or the proceeding on which the rule is  
32 based.

33       5. Any official transcript of oral presentations made in the  
34 proceeding on which the rule is based, or if not transcribed, any tape  
35 recording or stenographic record of those presentations, and any memorandum  
36 prepared by a presiding official summarizing the contents of those  
37 presentations.

38       6. A copy of all materials submitted to the council, including the  
39 economic, small business and consumer impact statement and the minutes of the  
40 council meeting at which the rule was reviewed.

41       7. A copy of the final rule, ~~AND preamble and concise explanatory~~  
42 statement.

43       8. Information requested regarding the experience, technical  
44 competence, specialized knowledge and judgment of an agency if the agency

1 relies on section 41-1024, subsection D in the making of a rule and a request  
2 is made.

3 C. On judicial review, the record required by this section constitutes  
4 the official agency rule making record with respect to a rule. Except as  
5 provided in section 41-1036, ~~subsection B~~ or otherwise required by a  
6 provision of law, the agency rule making record need not constitute the  
7 exclusive basis for agency action on that rule or for judicial review of that  
8 rule.

9 Sec. 6. Section 41-1030, Arizona Revised Statutes, is amended to read:

10 41-1030. Invalidity of rules not made according to this  
11 chapter; prohibited agency action

12 A. A rule is invalid unless it is made and approved in substantial  
13 compliance with sections 41-1021 through 41-1029, ~~section 41-1036~~ and  
14 articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.

15 B. An agency shall not base a licensing decision in whole or in part  
16 on a licensing requirement or condition that is not specifically authorized  
17 by statute, rule or state tribal gaming compact. A general grant of  
18 authority in statute does not constitute a basis for imposing a licensing  
19 requirement or condition unless a rule is made pursuant to that general grant  
20 of authority that specifically authorizes the requirement or condition.

21 C. An agency shall not:

22 1. Make a rule under a specific grant of rule making authority that  
23 exceeds the subject matter areas listed in the specific statute authorizing  
24 the rule.

25 2. Make a rule under a general grant of rule making authority to  
26 supplement a more specific grant of rule making authority.

27 Sec. 7. Section 41-1031, Arizona Revised Statutes, is amended to read:

28 41-1031. Filing rules and preamble with secretary of state;  
29 permanent record

30 A. Following the filing of a rule made pursuant to an exemption to  
31 this chapter or following approval and filing of a rule, ~~a AND preamble, a~~  
32 ~~concise explanatory statement~~ and an economic, small business and consumer  
33 impact statement by the council as provided in article 5 of this chapter OR  
34 BY THE ATTORNEY GENERAL AS PROVIDED IN ARTICLE 4 OF THIS CHAPTER, the  
35 secretary of state shall affix to each rule document, preamble, ~~concise~~  
36 ~~explanatory statement~~ and economic, small business and consumer impact  
37 statement the time and date of filing. A rule is not effective FINAL until  
38 the secretary of state affixes the time and date of filing to the rule  
39 document as provided in this section.

40 B. The secretary of state shall keep a permanent record of rules,  
41 ~~preambles, concise explanatory statements~~ and economic, small business and  
42 consumer impact statements filed with the office.

1       Sec. 8. Section 41-1032, Arizona Revised Statutes, is amended to read:  
2       41-1032. Effective date of rules

3       A. A rule becomes effective when SIXTY DAYS AFTER a certified original  
4 and two copies of the rule AND PREAMBLE are filed in the office of the  
5 secretary of state and the time and date are affixed as provided in section  
6 41-1031, unless THE RULE MAKING AGENCY INCLUDES IN THE PREAMBLE INFORMATION  
7 THAT DEMONSTRATES THAT THE RULE NEEDS TO BE EFFECTIVE IMMEDIATELY ON FILING  
8 IN THE OFFICE OF THE SECRETARY OF STATE AND THE TIME AND DATE ARE AFFIXED AS  
9 PROVIDED IN SECTION 41-1031. A RULE MAY ONLY BE EFFECTIVE IMMEDIATELY FOR  
10 ANY OF THE FOLLOWING REASONS:

11       ~~1. A later date is required by the Constitution of Arizona, statute~~  
12 ~~or court order or specified in the rule.~~

13       ~~2. A person who will or may be affected by the rule petitions the~~  
14 ~~agency before the rule becomes final for a later effective date and the~~  
15 ~~agency determines that good cause exists for and the public interest will not~~  
16 ~~be harmed by the later date.~~

17       1. TO PRESERVE THE PUBLIC PEACE, HEALTH OR SAFETY.  
18       2. TO AVOID A VIOLATION OF FEDERAL LAW OR REGULATION OR STATE LAW, IF  
19 THE NEED FOR AN IMMEDIATE EFFECTIVE DATE IS NOT CREATED DUE TO THE AGENCY'S  
20 DELAY OR INACTION.

21       3. TO COMPLY WITH DEADLINES IN AMENDMENTS TO AN AGENCY'S GOVERNING  
22 STATUTE OR FEDERAL PROGRAMS, IF THE NEED FOR AN IMMEDIATE EFFECTIVE DATE IS  
23 NOT CREATED DUE TO THE AGENCY'S DELAY OR INACTION.

24       4. TO PROVIDE A BENEFIT TO THE PUBLIC AND A PENALTY IS NOT ASSOCIATED  
25 WITH A VIOLATION OF THE RULE.

26       5. TO ADOPT A RULE THAT IS LESS STRINGENT THAN THE RULE THAT IS  
27 CURRENTLY IN EFFECT AND THAT DOES NOT HAVE AN IMPACT ON THE PUBLIC HEALTH,  
28 SAFETY, WELFARE OR ENVIRONMENT, OR THAT DOES NOT AFFECT THE PUBLIC  
29 INVOLVEMENT AND PUBLIC PARTICIPATION PROCESS.

30       B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A RULE MAKING AGENCY  
31 MAY SPECIFY AN EFFECTIVE DATE MORE THAN SIXTY DAYS AFTER THE FILING OF THE  
32 RULE IN THE OFFICE OF THE SECRETARY OF STATE IF THE AGENCY DETERMINES THAT  
33 GOOD CAUSE EXISTS FOR AND THE PUBLIC INTEREST WILL NOT BE HARMED BY THE LATER  
34 DATE.

35       C. THIS SECTION DOES NOT AFFECT THE VALIDITY OF AN EXISTING RULE UNTIL  
36 THE NEW OR AMENDED RULE THAT IS FILED WITH THE SECRETARY OF STATE IS  
37 EFFECTIVE PURSUANT TO THIS SECTION.

38       Sec. 9. Section 41-1036, Arizona Revised Statutes, is amended to read:  
39       41-1036. Preamble; justifications for rule making

40       A. ~~At the time it submits a rule to the council, an agency shall issue~~  
41 ~~a concise explanatory statement containing:~~

42       ~~1. An indication of any change between the text of the proposed rule~~  
43 ~~contained in the notice of proposed rule making filed with the secretary of~~  
44 ~~state pursuant to section 41-1022 and the text of the rule submitted to the~~  
45 ~~council, with the reasons for any change.~~

1           2. ~~An evaluation of the arguments for and against the rule, including~~  
2 ~~a response to comments received on the proposed rule and any supplementat~~  
3 ~~notices.~~

4           ~~B. Only the reasons contained in the concise explanatory statement or~~  
5 ~~the preamble may be used by any party as justifications for the making of the~~  
6 ~~rule in any proceeding in which its validity is at issue.~~

7           Sec. 10. Section 41-1044, Arizona Revised Statutes, is amended to  
8 read:

9           41-1044. Attorney general review of certain exempt rules

10          A. The attorney general shall review rules that are exempt pursuant  
11 to section 41-1057.

12          B. Rules that are exempt pursuant to section 41-1057 shall not be  
13 filed with the secretary of state unless the attorney general approves the  
14 rule as:

15           1. To form.

16           2. Clear, concise and understandable.

17           3. Within the power of the agency to make and within the enacted  
18 legislative standards.

19           4. Made in compliance with the appropriate procedures.

20          C. THE ATTORNEY GENERAL SHALL NOT APPROVE A RULE WITH AN IMMEDIATE  
21 EFFECTIVE DATE UNLESS THE ATTORNEY GENERAL DETERMINES THAT THE RULE COMPLIES  
22 WITH SECTION 41-1032.

23          ~~C.~~ D. Within sixty days of receipt of the rule the attorney general  
24 shall endorse the attorney general's approval on the rule package. After  
25 approval, the attorney general shall file the rule package with the secretary  
26 of state.

27          ~~D.~~ E. If the attorney general determines that the rule does not  
28 comply with subsection B of this section, the attorney general shall endorse  
29 the attorney general's disapproval of the rule on the rule package, state the  
30 reasons for the disapproval and within sixty days after receipt of the rule  
31 return the rule package to the agency that made the rule.

32          Sec. 11. Section 41-1052, Arizona Revised Statutes, is amended to  
33 read:

34           41-1052. Council review and approval

35          A. Before filing a final rule with the secretary of state, an agency  
36 shall prepare, transmit to the council and the committee and obtain the  
37 council's approval of the rule; ~~AND ITS preamble, concise explanatory~~  
38 ~~statement and economic, small business and consumer impact statement which~~  
39 ~~meets the requirements of section 41-1055.~~

40          B. Within ninety days of receipt of the rule, ~~preamble, concise~~  
41 ~~explanatory statement and economic, small business and consumer impact~~  
42 ~~statement, the council shall review and approve or return, in whole or in~~  
43 ~~part, the rule, preamble, concise explanatory statement or economic, small~~  
44 ~~business and consumer impact statement. An agency may resubmit a rule,~~  
45 ~~preamble, concise explanatory statement or economic, small business and~~

1 consumer impact statement if the council returns the rule or, economic, small  
2 business and consumer impact statement OR PREAMBLE, in whole or in part, to  
3 the agency.

4 C. The council shall not approve the rule unless:

5 1. The economic, small business and consumer impact statement contains  
6 the information, data and analysis prescribed by this article.

7 2. The economic, small business and consumer impact statement is  
8 generally accurate.

9 3. The probable benefits of the rule outweigh the probable costs of  
10 the rule.

11 4. The rule is clear, concise and understandable.

12 5. The rule is not illegal, inconsistent with legislative intent or  
13 beyond the agency's statutory authority.

14 6. The agency adequately addressed the comments on the proposed rule  
15 and any supplemental proposals.

16 7. The rule is not a substantial change, considered as a whole, from  
17 the proposed rule and any supplemental notices.

18 8. THE PREAMBLE DISCLOSES A REFERENCE TO ANY STUDY RELEVANT TO THE  
19 RULE THAT THE AGENCY REVIEWED AND EITHER DID OR DID NOT RELY ON IN THE  
20 AGENCY'S EVALUATION OF OR JUSTIFICATION FOR THE RULE.

21 D. The council shall verify that a rule with new fees does not violate  
22 section 41-1008. The council shall not approve a rule that contains a fee  
23 increase unless two-thirds of the voting quorum present vote to approve the  
24 rule.

25 E. THE COUNCIL SHALL VERIFY THAT A RULE WITH AN IMMEDIATE EFFECTIVE  
26 DATE COMPLIES WITH SECTION 41-1032. THE COUNCIL SHALL NOT APPROVE A RULE  
27 WITH AN IMMEDIATE EFFECTIVE DATE UNLESS TWO-THIRDS OF THE VOTING QUORUM  
28 PRESENT VOTE TO APPROVE THE RULE.

29 ~~E.~~ F. The council may require a representative of an agency whose  
30 rule is under examination to attend a council meeting and answer  
31 questions. The council may also communicate to the agency its comments on  
32 any rule, preamble, ~~concise explanatory statement~~ or economic, small business  
33 and consumer impact statement and require the agency to respond to its  
34 comments in writing.

35 ~~F.~~ G. A person may submit written comments to the council that are  
36 within the scope of subsection C, D OR E of this section. The council may  
37 permit oral comments at a council meeting within the scope of subsection C,  
38 D OR E of this section.

39 ~~G.~~ H. If the agency makes a good faith effort to comply with the  
40 requirements prescribed in this article and has explained in writing the  
41 methodology used to produce the economic, small business and consumer impact  
42 statement, the rule may not be invalidated after it is finalized on the  
43 ground that the contents of the economic, small business and consumer impact  
44 statement are insufficient or inaccurate or on the ground that the council  
45 erroneously approved the rule, except as provided for by section 41-1056.01.

1       H. I. The absence of comments pursuant to subsection C, D OR E of  
2 this section or article 4.1 of this chapter does not prevent the council from  
3 acting pursuant to this section.

4       Sec. 12. Section 41-1055, Arizona Revised Statutes, is amended to  
5 read:

6       41-1055. Economic, small business and consumer impact statement

7       A. The economic, small business and consumer impact summary shall  
8 include:

9       1. An identification of the proposed rule making.

10       2. A brief summary of the information included in the economic, small  
11 business and consumer impact statement.

12       3. If the economic, small business and consumer impact summary  
13 accompanies a proposed rule or a proposed summary rule, the name and address  
14 of agency employees who may be contacted to submit or request additional data  
15 on the information included in the economic, small business and consumer  
16 impact statement.

17       B. The economic, small business and consumer impact statement shall  
18 include:

19       1. An identification of the proposed rule making.

20       2. An identification of the persons who will be directly affected by,  
21 bear the costs of or directly benefit from the proposed rule making.

22       3. A cost benefit analysis of the following:

23       (a) The probable costs and benefits to the implementing agency and  
24 other agencies directly affected by the implementation and enforcement of the  
25 proposed rule making.

26       (b) The probable costs and benefits to a political subdivision of this  
27 state directly affected by the implementation and enforcement of the proposed  
28 rule making.

29       (c) The probable costs and benefits to businesses directly affected  
30 by the proposed rule making, including any anticipated effect on the revenues  
31 or payroll expenditures of employers who are subject to the proposed rule  
32 making.

33       4. A general description of the probable impact on private and public  
34 employment in businesses, agencies and political subdivisions of this state  
35 directly affected by the proposed rule making.

36       5. A statement of the probable impact of the proposed rule making on  
37 small businesses. The statement shall include:

38       (a) An identification of the small businesses subject to the proposed  
39 rule making.

40       (b) The administrative and other costs required for compliance with  
41 the proposed rule making.

42       (c) A description of the methods that the agency may use to reduce the  
43 impact on small businesses. These methods may include:

44       (i) Establishing less costly compliance requirements in the proposed  
45 rule making for small businesses.

1 (ii) Establishing less costly schedules or less stringent deadlines  
2 for compliance in the proposed rule making.

3 (iii) Exempting small businesses from any or all requirements of the  
4 proposed rule making.

5 (d) The probable cost and benefit to private persons and consumers who  
6 are directly affected by the proposed rule making.

7 6. A statement of the probable effect on state revenues.

8 7. A description of any less intrusive or less costly alternative  
9 methods of achieving the purpose of the proposed rule making.

10 C. If for any reason adequate data are not reasonably available to  
11 comply with the requirements of subsection B of this section, the agency  
12 shall explain the limitations of the data and the methods that were employed  
13 in the attempt to obtain the data and shall characterize the probable impacts  
14 in qualitative terms. The absence of adequate data, if explained in  
15 accordance with this subsection, shall not be grounds for a legal challenge  
16 to the sufficiency of the economic, small business and consumer impact  
17 statement.

18 D. An agency is not required to prepare an economic, small business  
19 and consumer impact statement pursuant to this chapter for the following rule  
20 makings:

21 1. Initial making, but not renewal, of an emergency rule pursuant to  
22 section 41-1026.

23 2. Summary rule makings pursuant to section 41-1027 that only repeal  
24 existing rule language.

25 3. Any rule making that decreases monitoring, record keeping or  
26 reporting burdens on agencies, political subdivisions, businesses or persons,  
27 unless the agency determines that increased costs of implementation or  
28 enforcement may equal or exceed the reduction in burdens.

29 E. The economic, small business and consumer impact statement for a  
30 rule making THAT IS exempt pursuant to subsection D of this section shall  
31 state that the proposed rule making is exempt.

32 Sec. 13. Section 41-1073, Arizona Revised Statutes, is amended to  
33 read:

34 41-1073. Time frames; exception

35 A. No later than December 31, 1998, an agency that issues licenses  
36 shall have in place final rules establishing an overall time frame during  
37 which the agency will either grant or deny each type of license that it  
38 issues. Agencies shall submit their overall time frame rules to the  
39 governor's regulatory review council pursuant to the schedule developed by  
40 the council. The council shall schedule each agency's rules so that final  
41 overall time frame rules are in place no later than December 31, 1998. The  
42 rule regarding the overall time frame for each type of license shall state  
43 separately the administrative completeness review time frame and the  
44 substantive review time frame.

1 B. If a statutory licensing time frame already exists for an agency  
2 but the statutory time frame does not specify separate time frames for the  
3 administrative completeness review and the substantive review, by rule the  
4 agency shall establish separate time frames for the administrative  
5 completeness review and the substantive review, which together shall not  
6 exceed the statutory overall time frame. An agency may establish different  
7 time frames for initial licenses, renewal licenses and revisions to existing  
8 licenses.

9 C. THE SUBMISSION BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OF A  
10 REVISED PERMIT TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY IN  
11 RESPONSE TO AN OBJECTION BY THAT AGENCY SHALL BE GIVEN THE SAME EFFECT AS A  
12 NOTICE GRANTING OR DENYING A PERMIT APPLICATION FOR LICENSING TIME FRAME  
13 PURPOSES. FOR THE PURPOSES OF THIS SUBSECTION, "PERMIT" MEANS A PERMIT  
14 REQUIRED BY TITLE 49, CHAPTER 2, ARTICLE 3.1 OR SECTION 49-426.

15 ~~C.~~ D. In establishing time frames, agencies shall consider all of the  
16 following:

- 17 1. The complexity of the licensing subject matter.
- 18 2. The resources of the agency granting or denying the license.
- 19 3. The economic impact of delay on the regulated community.
- 20 4. The impact of the licensing decision on public health and safety.
- 21 5. The possible use of volunteers with expertise in the subject matter  
22 area.
- 23 6. The possible increased use of general licenses for similar types  
24 of licensed businesses or facilities.
- 25 7. The possible increased cooperation between the agency and the  
26 regulated community.
- 27 8. Increased agency flexibility in structuring the licensing process  
28 and personnel.

29 ~~D.~~ E. This article does not apply to licenses issued either:

- 30 1. Pursuant to tribal state gaming compacts.
- 31 2. Within seven days after receipt of initial application.
- 32 3. By a lottery method.

33 Sec. 14. Section 41-1091, Arizona Revised Statutes, is amended to  
34 read:

35 41-1091. Substantive policy statements

36 A. An agency shall file substantive policy statements pursuant to  
37 section 41-1013, subsection B.

38 B. AN AGENCY SHALL ENSURE THAT THE FIRST PAGE OF EACH SUBSTANTIVE  
39 POLICY STATEMENT INCLUDES THE FOLLOWING NOTICE:

40 THIS SUBSTANTIVE POLICY STATEMENT IS ADVISORY ONLY. A  
41 SUBSTANTIVE POLICY STATEMENT DOES NOT INCLUDE INTERNAL  
42 PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF  
43 THE AGENCY AND DOES NOT IMPOSE ADDITIONAL REQUIREMENTS OR  
44 PENALTIES ON REGULATED PARTIES OR INCLUDE CONFIDENTIAL  
45 INFORMATION OR RULES MADE IN ACCORDANCE WITH THE ARIZONA



ADMINISTRATIVE PROCEDURE ACT. IF YOU BELIEVE THAT THIS SUBSTANTIVE POLICY STATEMENT DOES IMPOSE ADDITIONAL REQUIREMENTS OR PENALTIES ON REGULATED PARTIES YOU MAY PETITION THE AGENCY UNDER ARIZONA REVISED STATUTES SECTION 41-1033 FOR A REVIEW OF THE STATEMENT.

~~B.~~ C. The agency shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The agency shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules, AND substantive policy statements and any materials incorporated by reference in the directory, rules or substantive policy statements shall be open to public inspection at the office of the agency director.

~~C.~~ D. On or before June 30 of each year, the agency head shall certify to the council that the agency is in compliance with this section.

Sec. 15. Laws 2000, chapter 389, section 5 is amended to read:

Sec. 5. Department of environmental quality program performance objectives; legislative intent; public hearing; report

A. The committee of reference designated by the joint legislative audit committee to conduct the sunset review of the department of environmental quality in 1999 adopted a recommendation that the department submit performance objectives as part of the agency continuation process. These objectives are goals and are only intended to serve as a management tool and are not intended to circumvent or supersede current state law.

B. The legislature intends that the department of environmental quality be allowed to demonstrate its commitment to better serve the public. These performance objectives are intended to publicly demonstrate that commitment. The department is to be commended for its efforts and willingness to take actions to better serve the public.

C. The committee of reference designated by the joint legislative audit committee shall conduct at least one public hearing by no later than December 1, 2002 to take testimony on the status of the department of environmental quality's completion of the program performance objectives listed in this subsection. The department of environmental quality's program performance objectives consist of completing the following by June 30, 2002, except as otherwise provided:

1. Submit the Maricopa county serious area ozone attainment plan and the attainment or maintenance plans for six sulfur dioxide nonattainment areas.

2. Take final action on title V air quality permits for existing electric utilities, mines, smelters, lime plants, cement plants and ammonium nitrate plants.

1           3. Renew the air quality general permits for crushing and screening  
2 facilities and dry cleaners and complete the issuance of new general permits  
3 for soil vapor extraction facilities, gas stations and asphalt batch plants.

4           4. Take final action on fifty per cent of all of the aquifer  
5 protection permit applications that are pending on January 1, 2000.

6           5. Increase by five the number of types of general permits available  
7 under the aquifer protection permit program.

8           6. Respond to ninety per cent of requests for underground storage tank  
9 site closures within sixty days of the department's receipt of the request  
10 for closure.

11          7. Approve corrective action plans for forty-five per cent of the  
12 currently open underground storage tank sites that have groundwater  
13 contamination in excess of aquifer water quality standards.

14          8. Enact rules and corresponding guidance documents to implement a  
15 risk based corrective action process for underground storage tanks.

16          9. Reduce program costs in the underground storage tank program as  
17 prescribed by section 49-1051, Arizona Revised Statutes.

18          10. Complete construction and begin final clean-up or significant early  
19 response actions on at least five additional high priority water quality  
20 assurance revolving fund sites.

21          11. For sites that are on the water quality assurance revolving fund  
22 registry on January 1, 2000, initiate potentially responsible party searches  
23 by June 30, 2001.

24          12. For sites added to the water quality assurance revolving fund  
25 registry after January 1, 2000, initiate potentially responsible party  
26 searches by January 31, 2002, but not sooner than six months after the  
27 listing.

28          13. Initiate at least one multiparty water quality assurance revolving  
29 fund allocation.

30          D. The department of environmental quality shall provide a report or  
31 other information to the committee of reference regarding the department's  
32 completion of the program performance objectives listed in subsection C of  
33 this section by no later than August 31, 2002.

34          E. The committee of reference shall provide a written notice of its  
35 findings to the speaker of the house of representatives, the president of the  
36 senate and the governor by no later than December 31, 2002.

37          F. FINAL ACTION ON A TITLE V PERMIT FOR AN EXISTING SOURCE BY JUNE 30,  
38 2002, PURSUANT TO SUBSECTION C, PARAGRAPH 2 OF THIS SECTION SHALL NOT BE  
39 CONSIDERED A PERFORMANCE MEASURE IF EITHER OF THE FOLLOWING ARE TRUE:

40           1. THE SOURCE WAIVES ISSUANCE OF THE TITLE V PERMIT BY THAT DATE.

41           2. THE ENVIRONMENTAL PROTECTION AGENCY OBJECTS TO THE FINAL PROPOSED  
42 PERMIT FOR THE SOURCE.

1       Sec. 16. Regulatory reform and enforcement study committee;  
2               composition; duties; report

3       A. The regulatory reform and enforcement study committee is  
4 established consisting of the following members:

5       1. Three members of the house of representatives who are appointed by  
6 the speaker of the house of representatives, not more than two of whom are  
7 members of the same political party. The speaker shall designate one of  
8 these members as cochairperson of the committee.

9       2. Four members of the senate who are appointed by the president of  
10 the senate, not more than two of whom are members of the same political  
11 party. The president shall designate one of these members as cochairperson  
12 of the committee.

13       3. Two members who are appointed by the governor and who represent one  
14 of the following groups:

15       (a) Occupational licensing boards.

16       (b) Regulated professions and occupations.

17       4. Two members who represent the general public and who are appointed  
18 by the governor, one of whom has experience with the practice of  
19 administrative law in this state.

20       5. Two members, one of whom represents a large state agency and one  
21 of whom represents a small state agency, who are appointed by the governor.

22       6. One member who is a representative of the regulated community and  
23 who is appointed by the speaker of the house of representatives.

24       7. One member who is a representative of the regulated community and  
25 who is appointed by the president of the senate.

26       8. One member who is a county supervisor and who is appointed by the  
27 governor.

28       B. The study committee shall:

29       1. Conduct hearings and inquire into the following:

30       (a) Conditions under which state agencies comply with federal guidance  
31 and requirements, submit to federal preemption, enforce a state statute or  
32 regulation implementing a federal program and comply with federal mandates.

33       (b) Development of a uniform methodology for the calculation of fees.

34       (c) Availability of state and county laws and substantive policy  
35 statements online.

36       (d) Criminal enforcement of regulatory law and effectiveness of this  
37 enforcement.

38       (e) The right to recover attorney fees and costs in administrative  
39 appeal processes.

40       (f) Compliance with past state and county regulatory reform  
41 legislation and their application to other levels of government.

42       (g) Statutory exemptions from the administrative procedures act.

43       (h) Coordination of agencies on permits or other government approvals  
44 for the type of activities that need them from more than one agency or level  
45 of government.

1 (i) The extent that this state and political subdivisions have adopted  
2 unnecessary, duplicative or inconsistent regulations.

3 (j) The effectiveness of agency ombudsmen and other compliance  
4 assistance programs.

5 (k) The application of the state administrative procedures act to  
6 programs delegated to the political subdivisions through delegation  
7 agreements.

8 (l) Methods to increase the reliability of economic impact statements  
9 of proposed rule makings.

10 2. On or before December 15, 2003, submit a written report of its  
11 findings and recommendations to the speaker of the house of representatives,  
12 the president of the senate and the governor. The committee shall provide  
13 a copy of its report to the secretary of state and the director of the  
14 Arizona state library, archives and public records.

15 C. The study committee may use the services of staff from the  
16 legislative and executive branches as needed and made available by the  
17 governor, the speaker of the house of representatives and the president of  
18 the senate.

19 Sec. 17. Delayed repeal

20 Section 16 of this act, relating to the regulatory reform and  
21 enforcement study committee, is repealed from and after January 31, 2004.

22 Sec. 18. Retroactivity

23 Laws 2000, chapter 389, section 5, as amended by this act, applies  
24 retroactively to from and after February 28, 2002.

APPROVED BY THE GOVERNOR JUNE 4, 2002.

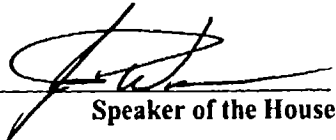
FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 4, 2002.

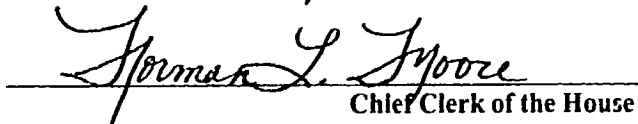


Passed the House April 25, 20 02,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

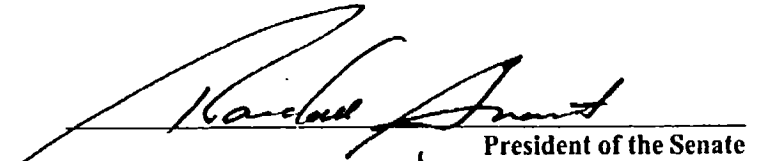
  
Speaker of the House

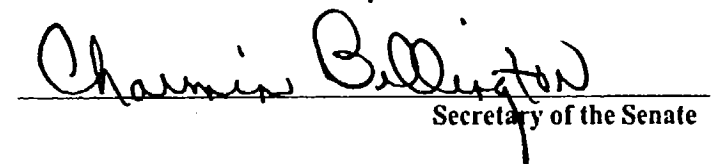
  
Chief Clerk of the House

Passed the Senate March 27, 20 02,

by the following vote: 23 Ayes,

7 Nays, 0 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

       day of       , 20  ,

at        o'clock        M.

        
Secretary to the Governor

Approved this        day of

      , 20  ,

at        o'clock        M.

        
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this        day of       , 20  ,

at        o'clock        M.

        
Secretary of State

S.B. 1339

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 21, 2002,

by the following vote: 43 Ayes,

5 Nays, 12 Not Voting

Jake Flake  
Speaker of the House  
Pro Tempore  
Norman L. Moore  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 21, 2002,

by the following vote: 23 Ayes,

4 Nays, 3 Not Voting

Robert Anderson  
President of the Senate  
Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 22 day of May, 2002,

at 2:48 o'clock P M.

Sandra Taylor  
Secretary to the Governor

Approved this 4th day of

June, 2002,

at 10:21 o'clock A M.

Sam McCall  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of June, 2002,

at 5:31 o'clock P M.

Robert Bayless  
Secretary of State

S.B. 1339